

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	WC Docket No. 05-337
Universal Service	)	
	)	
High-Cost Universal Service Support	)	

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COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL

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On the Comments:

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Date: May 31, 2007

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**I. INTRODUCTION.**

The New Jersey Division of Rate Counsel (“Rate Counsel”) submits these brief comments to the Federal Communications Commission (“FCC” or “Commission”) in response to the Public Notice in which the Federal-State Joint Board on Universal Service (“Joint Board”) seeks comment on various proposals to reform the high-cost universal service support mechanisms.<sup>1</sup> Rate Counsel has addressed the urgent need to implement high cost fund reform in comments submitted previously in this proceeding,<sup>2</sup> and, in those comments has discussed numerous issues, including some that bear directly on those now being considered, including, among other things, the digital divide that is

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<sup>1</sup> / Public Notice, FCC 07J-2, “Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform,” WC Docket No. 05-337, released May 1, 2007.

<sup>2</sup> / See Rate Counsel initial and reply comments, submitted March 27, 2006, and May 26, 2006, respectively.

emerging as a result of the industry's uneven roll-out of advanced services.<sup>3</sup> As a result of the Telecommunications Act of 1996<sup>4</sup> ("Act" or "1996 Act"), and in the name of replacing purportedly eroded implicit support for high cost areas, non-rural carriers are receiving millions of dollars that they would not otherwise have received. Meanwhile, the local competition (which Congress believed would jeopardize incumbents' implicit support) has not materialized, and now, consumers are harmed in multiple ways. Competitive choice is diminishing in the wake of major mergers, and yet consumers must simultaneously pay for high cost support.

#### **A. INTEREST OF THE RATE COUNSEL IN THE INSTANT PROCEEDING.**

Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities.<sup>5</sup>

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<sup>3</sup>/ Rate Counsel initial, at Appendix A.

<sup>4</sup> / Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the 1996 Act," or "the Act," and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

<sup>5</sup> / Effective July 1, 2006, the New Jersey Division of the Ratepayer Advocate is now Rate Counsel. The office of Rate Counsel is a Division within the New Jersey Department of the Public Advocate. The Department of the Public Advocate is a government agency that gives a voice to New Jersey citizens who often lack adequate representation in our political system. The Department of the Public Advocate was originally established in 1974, but it was abolished by the New Jersey State Legislature and New Jersey Governor Whitman in 1994. The Division of the Ratepayer Advocate was established in 1994 through enactment of Governor Whitman's Reorganization Plan. See New Jersey Reorganization Plan 001-1994, codified at N.J.S.A. 13:1D-1, et seq. The mission of the Ratepayer Advocate was to make sure that all classes of utility consumers receive safe, adequate and proper utility service at affordable rates that were just and nondiscriminatory. In addition, the Ratepayer Advocate worked to insure that all consumers were knowledgeable about the choices they had in the emerging age of utility competition. The Department of the Public Advocate was reconstituted as a principal executive department of the State on January 17, 2006, pursuant to the Public Advocate Restoration Act of 2005, P.L. 2005, c. 155 (N.J.S.A. §§ 52:27EE-1 et seq.). The Department is authorized by statute to "represent the public interest in such administrative and court proceedings . . . as the Public Advocate deems shall best serve the public interest," N.J.S.A. 52: 27EE-57, i.e., an "interest or right arising from the Constitution, decisions of court, common law or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens." N.J.S.A.52:27EE-12; The Division of Rate Counsel, formerly known as the Ratepayer Advocate, became a division therein to continue its mission of protecting New Jersey ratepayers in utility matters. The Division of Rate Counsel represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates in Federal and state administrative and judicial proceedings.

Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to Rate Counsel's continued participation and interest in implementation of the Telecommunications Act of 1996. New Jersey consumers' interests, among others, include the following:

- As net contributors to the high cost fund, New Jersey consumers have an interest in ensuring that the high cost fund is sufficient but not excessive. Ultimately, consumers foot the bill for universal service charges.<sup>6</sup>
- As users of the public switched network, seeking to communicate with consumers throughout the nation, including consumers located in high cost areas, New Jersey consumers have an interest in ensuring that high cost funds are sufficient to enable rural consumers to pay charges that are reasonably comparable to those in urban areas: as has been long-recognized, the value of the network increases as the number of subscribers increases. To the extent that high rates discourage subscribership, consumers throughout the country lose on the positive externality associated with interconnectedness.
- As consumers of virtually monopoly basic local exchange service, who must ultimately pay for universal service fund ("USF") charges, New Jersey consumers have an interest in a high cost fund mechanism that encourages economically efficient investment in the local network.

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<sup>6</sup> / New Jersey ranks 52<sup>nd</sup> among 56 states and territories receiving high cost universal service support, and receives a negligible \$1.3 million. *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, *Recommended Decision*, rel. May 1, 2007, Appendix B.

## **B. SCOPE OF THE PROCEEDING**

The directives set forth in the 1996 Act regarding universal service, although seemingly straightforward in their objective, have proven complex and controversial to implement. The Joint Board currently seeks comment on:

Reverse auctions;

GIS technology and cost modeling;

Disaggregation of support;

Competitive ETC support; and

Broadband.<sup>7</sup>

In these initial comments, Rate Counsel primarily addresses broadband support, and briefly addresses several of the other issues about which the Joint Board seeks comment.

## **II. PRELIMINARY DISCUSSION OF JOINT BOARD ISSUES**

**GIS technology can assist states and the Commission in determining where broadband gaps exist.**

Rate Counsel supports the use of GIS technology to assess where broadband gaps exist but, as the following section discusses, opposes efforts to assess high cost support requirement on an excessively granular level.

**Carriers should not further disaggregate support.**

Rate Counsel opposes any change to high cost support calculations that would assess need on a more geographically disaggregated basis than is now used because such granularity would likely

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<sup>7</sup> / Public Notice, at 2-5.

increase the high cost fund. Using a simplified example, assume the cost of serving five census block groups (“CBG”) were \$6, \$8, \$10, \$12 and \$14, and assume further that high cost support was provided to lines with costs exceeding \$10. In this example, a carrier would receive support for the \$12 CBG and the \$14 CBG even though the average cost to the carrier for serving all customers is only \$10. If, instead, high cost support need was assessed at a broader level the carrier would not require any support, consistent with the fact that the carrier is also serving below-cost lines as well as above-cost lines. Measuring costs at granular levels does not pose a problem, but an assessment of a carrier’s need should occur over a study area. The more granular the level of assessment of need, the higher the high cost support fund will grow.

**The digital divide between those who subscribe to advanced services and those who do not is thwarting the nation’s vision of universal service.**

As set forth by Section 254(b)(2) of the Act, “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation.” The non-rural high-cost fund does not presently support advanced telecommunications and information services. The use of LECs’ common platform for diverse services, many of which are unregulated or interstate services, raises several public policy concerns, which bear on the Commission’s deliberations in this proceeding:

- LECs’ increasing use of the common public switched network for services that have been classified as interstate means that the existing separations factor grossly over-allocates

costs to the intrastate jurisdiction.<sup>8</sup> The excessive allocation of network costs to the intrastate jurisdiction inhibits states' ability to set just, reasonable, and affordable rates. Rate Counsel has addressed these concerns comprehensively in the FCC's separations proceeding.<sup>9</sup>

- Customers who do not subscribe to broadband services are subsidizing those customers who do subscribe to these advanced services. Unless and until federal and state regulators ensure that advanced services bear a fair share of the costs of the network, those customers who subscribe only to plain old telephone service ("POTS") will be subsidizing advanced services. Unless and until demand for broadband services approximates that for POTS, or LECs offer broadband services at POTS prices, this is an unfair consequence of the misallocation of network costs.

Assuming that, as a nation, we seek to ensure that all segments of society have comparable access to advanced services, the Joint Board appropriately seeks comment on "the impact of adding broadband support to the size of the fund and whether broadband should be a

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<sup>8</sup> / Based on the recommendation of the Federal-State Separations Joint Board, the Commission adopted an interim freeze on jurisdictional separations rules effective July 1, 2001, which expires in June 2006. *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, *Recommended Decision*, 15 FCC Rcd 13,160; *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, *Report and Order*, 16 FCC Rcd 11,382 (2001) ("Separations Freeze Order"). On December 12, 2005, the United States Telecom Association submitted a white paper entitled, "Paving the Way for Jurisdictional Separations Reform," which argues for an extension of the separations freeze that the Commission adopted five years ago until such time as the Commission adopts a permanent rule. The Ratepayer Advocate discusses its opposition to such an extension in comments submitted in other ongoing proceedings.

<sup>9</sup> / Comments of the National Association of State Utility Consumer Advocates, the New Jersey Division of Rate Counsel and the Maine Office of the Public Advocate in CC Docket No. 80-286, August 22, 2006; Affidavit of Susan M. Baldwin on behalf of the New Jersey Division of Rate Counsel and the National Association of State Utility Consumer Advocates in CC Docket No. 80-286, August 22, 2006; Affidavit of Robert Loube on behalf of the Maine Office of the Public Advocate and the National Association of State Utility Consumer Advocates, August 22, 2006. Reply Comments of the National Association of State Utility Consumer Advocates, the New Jersey Division of Rate Counsel and the Maine Office of the Public Advocate in CC Docket No. 80-286, November 20, 2006,

separately identified category of support apart from other high-cost support.”<sup>10</sup> The Joint Board should consider not only whether rural areas have broadband access comparable to that of urban areas, but also whether all socioeconomic groups have comparable access.

In comments filed last year, Rate Counsel stated that “[t]he burden should be on non-rural ETCs to demonstrate any need for support to provide advanced services.”<sup>11</sup> Rate Counsel further proposed several specific recommendations, that one year later, continue to be relevant to the Joint Board’s consideration of reverse auctions and broadband support:

A logical first step would be to expand the Lifeline and Linkup programs to encompass a steep discount for broadband access, which a consumer could use for any supplier.<sup>12</sup> Any attempts by the Commission to narrow the digital divide should address not only high cost areas, but also low-income communities. As Table 2 in Appendix A shows, the LECs favor affluent communities as they roll out fiber in neighborhoods. Appendix B summarizes general statistics about broadband demand. [Rate Counsel] welcomes the opportunity to contribute to any future Commission investigation of this issue, whether in this proceeding or a future proceeding.<sup>13</sup> However, [Rate Counsel] opposes the expansion of the non-rural high cost mechanism as a way to achieve broadband ubiquity; instead, the Lifeline program should be expanded to encompass broadband services. By using the Lifeline program, the Commission could ensure that subsidies flow to consumers rather than to carriers, thereby linking USF support to rates, as *Qwest II* requires.

To promote the affordable availability of advanced services, incumbent local exchange carriers (“ILEC”) should offer broadband and fiber to the home at POTS prices. If there are areas of the country that are either underserved or entirely

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<sup>10</sup> / Public Notice, at 5.

<sup>11</sup> / Rate Counsel initial comments, at 23.

<sup>12</sup> / The Lifeline income eligibility is low and so would not address income constraints of the working poor, those on minimum wage, and others with little or no disposable income. For this reason, the Commission may need to explore other ways to target broadband support to a larger segment of the population. To promote technology neutrality (*i.e.*, not favoring one provider over another), the support should be fully portable. To promote administrative efficiency, an existing income verification program would be desirable.

<sup>13</sup> / The Ratepayer Advocate also submitted initial and reply comments discussing these issues in the FCC’s *Consumer Protection in a Broadband Era* proceeding. See, *In the Matter of Consumer Protection in a Broadband Era*, WC Docket No. 05-271, Comments of the New Jersey Division of the Ratepayer Advocate, January 17, 2006, at 15-23; Reply Comments of the New Jersey Division of the Ratepayer Advocate, March 1, 2006, at 13.



neglected, the boundaries of those areas should be defined clearly, with state-of-the-art mapping technology. If the reason for the lack of advanced services is that the anticipated revenues from the advanced services would not cover the anticipated cost of deployment, the areas should be opened to high-cost bidding by competitors to serve the area. Competitors should then be required to commit to specified minimum service quality requirements, maximum pricing constraints, and minimum years of commitment to service. The competitor requiring the least amount of high cost support should be awarded the unique opportunity to serve the area for a specified period of time, until it can be demonstrated that the geographic area can support multiple suppliers. Alternatively, consumers should be awarded high cost/advanced services funds directly to be used as an offset against a broadband bill.

An important component of determining whether high cost funds might be needed to promote advanced services is assessing the present demand for and deployment of broadband services. Appendix B provides a general overview of demand for broadband service. The Commission's report on high-speed access provides information about broadband demand and also summarizes some data about deployment, *i.e.*, the availability of high-speed access. For example, one table summarizes the quantity of high-speed providers by state, and a map entitled "High Speed Providers by Zip Code" illustrates the geographic distribution of high speed providers. The FCC's report includes some information about the relationship of deployment and household income. The Ratepayer Advocate urges the Commission to continue to collect and report these data, and to expand its analysis of the relationship of income both to deployment and to consumer demand. In order to fulfill the nation's objective of universal service, advanced services must be available to and affordable by all consumers, regardless of geography or income.<sup>14</sup>

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<sup>14</sup> / Rate Counsel initial, at 23-25, cites omitted.

More than a year ago, Rate Counsel recommended that the Commission improve its broadband data collection, stating, among other things, “[i]f there are areas of the country that are either underserved or entirely neglected, the boundaries of those areas should be defined clearly, with state-of-the-art mapping technology.”<sup>15</sup> The Commission and Congress are now investigating ways to improve data collection.<sup>16</sup>

## CONCLUSION

Rate Counsel urges the Commission to consider carefully the implications of any decisions that it renders in this proceeding for consumers throughout the nation. Furthermore, any non-rural carrier that receives high cost support should be accountable to consumers and required to demonstrate how the high cost subsidy benefits consumers. Finally, Rate Counsel urges the Commission to ensure that broadband is affordable for all consumers regardless of their geographic location and income.

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<sup>15</sup> / *Id.*, at 25.

<sup>16</sup> / *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, FCC WC Docket No. 07-38, *Notice of Proposed Rulemaking*, Rel. April 16, 2007. On May 17, 2007, the U.S. House of Representatives Subcommittee on Telecommunications and the Internet of the Committee on Energy and Commerce held a legislative hearing on broadband mapping and data collection. Also, on May 24, 2007, U.S. Senate Committee on Commerce, Science, and Transportation Chairman Daniel K. Inouye introduced the “Broadband Data Improvement Act,” “which seeks to improve the quality of federal broadband data collection and encourages state initiatives that promote broadband deployment.” U.S. Senate Committee on Commerce, Science, and Transportation Press Release, “Inouye Introduces Broadband Data Improvement Act,” May 24, 2007.

Respectfully submitted,

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Dated: May 31, 2007